IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

RCRev..No. 11 of 2007()

{R.C.A.NO.16/2006 OF THE VI ADDL.DISTRICT COURT, [RENT CONTROL APPELLATE AUTHORITY], ERNAKULAM
IN R.C.P.NO.123/2000 OF THE IIIRD ADDITIONAL MUNSIFF'S COURT (RENT CONTROL COURT), ERNAKULAM}

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REVISION PETITIONER/APPELLANT/RESPONDENT:

ABDUL NAZAR.K.M., S/O.KAKKATTU KHADER,
AGED 45 YEARS, RESIDING AT KAKKATTU HOUSE,
H.NO.42/1137, K.K.PADMANABHAN RAOD, KOCHI-18.

BY ADV. SRI.A.BALAGOPALAN
SRI.A.RAJAGOPALAN
SRI.R.RAJESH
SRI.SOJO J.KALLIDUKIL
SMT.SANTHINI.V.B.

RESPONDENTS: RESPONDENTS/PETITIONERS:
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1. A.D.RETNAKARA SHENOY, AGED 68 YEARS,
S/O.A.P.DAMODARA SHENOY,
RESIDING AT DAMODARAN
NIVAS, T.D. ROAD, ERNAKULAM.

2. ABDUL KAREEM K.M., AGED 62,
S/O.KAKKATTU KHADER MOIDEEN, RESIDING AT
KAKKATTU HOUSE, H.NO.42/1137,
K.K.PADMANABHAN ROAD, KOCHI-18.

3. K.M.ABDUL RAZAK (DIED),

4. K.M.HAJILRA BEEVI, AGED 56,
D/O.KAKKTTU KHADER MOIDEEN
AND W/O.V.K.SEETHI,
SEETHI MANZIL, WEST VELIYATHUNADU, ALUVA.

5. K.M.ABDUL MAJEED, AGED 54,
S/O.KAKKATTU KHADER MOIDEEN, RESIDING AT
KAKKATTU HOUSE, H.NO.42/1137,
K.K.PADMANABHAN ROAD, KOCHI-18.

6. K.M.SHATIA BEEVI, AGED 46,
D/O.KAKKATTU KHADER MOIDEEN AND
W/O.K.M.BASHEER, PATTIKUDY HOUSE,
ULIYANNOOR, ALUVA.

7. SUHARA, WIDOW OF LATE ABDUL RAZAK,
AGED 52, RESIDING AT H.NO.32/1237,
EDAPPALLY, KOCHI 24.

8. RIYAS, AGED ABOUT 28,S/O.ABDUL RAZAK,
RESIDING AT HOUSE NO.32/1237,
EDAPPALLY, KOCHI 24.

9. ROSHU, AGED ABOUT 25, S/O.ABDUL RAZAK,
RESIDING AT H.NO.32/1237, EDAPPALLY,
KOCHI-24.

BY ADV. SRI.P.S.USUPH
SRI.P.U.ZIYAD

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 18/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A.ABDUL GAFOOR &
K.PADMANABHAN NAIR, JJ.

R.C.R.NO.11 OF 2007

Dated this the 18th day of January, 2007.

O R D E R

K.PADMANABHAN NAIR, J.

The 6th respondent in R.C.P.No.123/00 on the file of the Rent Control Court, Ernakulam and appellant in R.C.A.No.16 of 2006 on the file of Rent Control Appellate Authority, is the revision petitioner. The first respondent filed the petition for eviction against petitioner and respondents 2 to 9 under Sections 11(3), (11(4)(iii) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act [Act 2 of 1965] {hereinafter referred to as '**the Act**'}.

2. In the petition for eviction, it was averred that the landlord bona fide needs the building for his own occupation. According to the 1st respondent, he is residing in a building belonging to his deceased brother. It was also alleged that the heirs of the

tenant have subsequently acquired buildings, which are reasonably sufficient to meet their requirements. It was also alleged that the tenant has, without reasonable cause, ceased to occupy the building for more than 6 months. The Rent Control Court ordered eviction on all the three counts. The petitioner alone appealed. The Rent Control Appellate Authority, confirmed the finding of the Rent Control Court that the 1st respondent bona fide need the building for his own occupation and the tenants are not entitled to the protection provided under second proviso to Section 11(3) of the Act. The protection claimed by the tenant under Section 11(17) was also disallowed. The Rent Control Appellate Authority also found that the tenants have subsequently acquired buildings, which are reasonably sufficient to meet their requirements. The finding of the Rent Control Court that the tenants have ceased to occupy

the building without reasonable cause was set aside. Challenging the concurrent finding, the appellant in R.C.A, who is one of the heirs of the original tenant, has filed the Rent Control Revision Petition.

3. Counsel for the petitioner has argued that the need projected by the landlord is not bona fide. It is also argued that the landlord made several attempts to evict the tenants from the building. But, every time, the tenants succeeded. It is argued that the bona fide need alleged is only a ruse to evict tenant. It is also argued that 1st respondent own other buildings and he filed the petition for eviction suppressing material facts.

4. 1st respondent adduced evidence to prove that he is residing in a building belonging to his brother. Before the Appellate Authority, he filed an affidavit in answer to an interrogatory served on him stating that his wife also has no building of her

own. Both Authorities have concurrently found that tenants failed to prove that 1st respondent is having any building of his own in his possession. So the finding of the Authorities below that the landlord bona fide needs the building for his occupation is only to be confirmed. The evidence in this case shows that the building in question is a residential building let out for residential purpose. Subsequently, the tenant started a business also. Since the building was let out for residential purpose, the petitioner is not entitled to claim protection provided under the 2nd proviso to Section 11(3) of the Act. Even assuming that the building was let out for conducting business, the tenant failed to prove that he is mainly depending upon the income derived from the business conducted in the petition scheduled building. There is no evidence to prove that no suitable building is available in the locality.

5. The petitioner claimed protection under Section 11(17) of the Act. Both Authorities had concurrently found that the petitioner failed to prove that the building was let out to the predecessor in interest of the petitioner prior to 1.4.1940. The 1st respondent adduced evidence to show that the building was let out in the year 1943. So the revision petitioner is not entitled to get the protection provided under Section 11(17) of the Act.

6. The landlord sought eviction on the ground that the tenants had subsequently acquired buildings which are reasonably sufficient to meet their requirements. The building was let let out to late Sri.Kader Moideen. The original tenant died. Petitioner and respondents 4 to 6 are the heirs of the tenant. Respondents 7 to 9 are the heirs of late Sri.Abdul Razack, one of the sons of original tenant. The evidence adduced in this case show that sons of

the original tenant have subsequently acquired buildings which are reasonably sufficient to meet their requirements. The daughters are residing along with their husbands in their houses. So the finding of the Authorities below that the landlord is entitled to get an order of eviction under Section 11(4)(iii) is also correct. There is no merit in the R.C.R and the same is only to be dismissed.

7. Counsel for the petitioner submitted that the revision petitioner is conducting a business in the petition scheduled building. It is also submitted that it will take some time to make arrangements to shift the articles kept in the business premises. Considering all aspects of the matter, we are of the view that a period of three months can be granted to the revision petitioner to vacate the premises.

8. In the result, the R.C.R is dismissed. The revision petitioner is given three months' time to

surrender vacant possession of the building to the landlord provided, he pays or deposits in the Rent Control Court for payment to the landlord, the entire arrears of rent and other amounts, if any, ordered to be paid and due to the 1st respondent, within a period of one month from today. He shall also file an undertaking by way of an affidavit that he shall surrender vacant possession of the building without raising any objection and further that he will not induct any stranger in the premises. The affidavit shall be filed within three weeks from today.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.PADMANABHAN NAIR)
JUDGE

sk/

//true copy//

P.S. To Judge

K.A.ABDUL GAFOOR &
K.PADMANABHAN NAIR, JJ.

R.C.R.NO.11 OF 2007

O R D E R

18th January, 2007.